

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of

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Numbering Resource Optimization

CC Docket No. 99-200

To The Commission:

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JUL 20 2000

**PETITION FOR TEMPORARY WAIVER OF
47 C.F.R. §§ 52.15(f)(6)(i) and 52.15(j)**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VoiceStream Wireless Corporation ("VoiceStream"), pursuant to 47 C.F.R. § 1.3, hereby petitions the Federal Communications Commission ("FCC") for an immediate temporary waiver of 47 C.F.R. § 52.15(f)(6)(i), which requires carriers to file FCC Form 502 on August 1, 2000, and 47 C.F.R. § 52.15(j), which requires carriers generally to assign numbers sequentially.¹ As shown below, unique circumstances support the grant of the requested waivers, which will not undermine the policies served by the rules themselves. Indeed, the public interest will be served by grant of the waivers because VoiceStream will be able to provide the FCC with more complete and accurate data about its numbering utilization and to consolidate and revamp its systems in order to comply with the FCC's sequential numbering rules.

Background and Introduction

Based in Bellevue, Washington, VoiceStream is the fastest growing provider of personal communications services ("PCS") in the United States. VoiceStream provides PCS services throughout the United States using Global System for Mobile Communications ("GSM") technology. VoiceStream recently merged with both Omnipoint Corporation ("Omnipoint") and Aerial

¹ These rules were adopted in the *Report and Order* in the above-captioned proceeding. *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 00-104 (rel. March 31, 2000) ("*Report and Order*").

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Communications (“Aerial”). Now that the mergers with Omnipoint and Aerial have been completed, VoiceStream’s licensed coverage area would allow it to serve three out of every four people in the United States, making VoiceStream one of the major nationwide providers of wireless communications services in the country.

VoiceStream is an industry leader in growth performance, adding 524,300 net new subscribers for the year ending December 31, 1999 compared to 193,800 net new subscribers for the year ending December 31, 1998. Subsequent to the merger with Omnipoint and Aerial, it has over three million subscribers. VoiceStream expects that this high rate of growth will continue as more consumers recognize the value and high quality of the innovative GSM based services that VoiceStream provides.

VoiceStream shares the numbering optimization goals of the Commission, the states, and the industry at large, and supports many of the measures that the FCC adopted in the *Report and Order* to meet these goals. As such, VoiceStream recognizes that it is in its own interest to implement these measures as soon as possible. In order to speed the implementation process, VoiceStream has assembled a team of employees, vendors and consultants to make the necessary changes to the billing and other systems to report utilization information and assign numbers sequentially in the manner requested by the Commission. Nevertheless, the deadlines that the FCC set in the *Report and Order* for reporting utilization and implementing sequential number assignment have proven to be unrealistic for carriers in general, and impossible for VoiceStream in particular due to the massive scope of system and process modifications that VoiceStream must complete. Despite the substantial effort and expense, VoiceStream has not been able to meet the FCC’s deadline for implementing sequential number assignment and will not be able to gather the accurate data necessary to meet the deadline for reporting numbering utilization.

Based on the foregoing, VoiceStream petitions the FCC for a temporary waiver to file its Form 502 on November 1, 2000, instead of August 1, 2000. VoiceStream's existing systems were not designed to capture and organize data in the manner now required under the *Report and Order*. To complicate matters, VoiceStream is in the process of consolidating and upgrading three separate billing and reporting systems – a massive undertaking necessitated by its recently approved merger with Omnipoint and Aerial. The requested temporary waiver would enable VoiceStream to complete the reprogramming and process engineering efforts necessary to gather accurate data, which ultimately will assist NANPA to analyze code utilization trends and predict code exhaust accurately. VoiceStream also recommends that the snapshots of the data be taken on September 30, 2000, and March 30, 2001.

VoiceStream similarly requests that the FCC delay the compliance date for meeting the sequential number assignment guidelines until February 1, 2001. The Industry Numbering Committee ("INC") Thousands-Block Pooling Administrative Guidelines have not been implemented in VoiceStream's systems, as the requirement to participate in this enabler of number pooling did not exist until the *Report and Order*, and the system changes necessary to achieve sequential number assignment have proven to be resource-intensive and time-consuming to implement. Again, the difficulties of making the necessary system changes have been compounded tremendously by VoiceStream's recent merger with Omnipoint and Aerial. The requested waiver would allow VoiceStream to complete the reprogramming efforts necessary to ensure that VoiceStream assigns numbers in a manner that is consistent with the requirements of the *Report and Order*.

Applicable Waiver Standards

Pursuant to 47 C.F.R. § 1.3, the FCC may waive application of any of its rules for good cause shown. As the courts have observed, an "agency's discretion to proceed in difficult areas through

general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”² Further, application of a general rule may not be in the public interest if extended to a party whose proposal “will not undermine the policy, served by the rule, that has been adjudged in the public interest.”³ Accordingly, the FCC “must take a ‘hard look’ at applications for waiver and must consider all relevant factors.”⁴

I. VOICESTREAM REQUESTS A TEMPORARY WAIVER OF THE FILING DEADLINE FOR FCC FORM 502 UNTIL NOVEMBER 1, 2000

In the *Report and Order*, the Commission determined that carriers should report forecast and utilization information semi-annually, beginning no later than August 1, 2000.⁵ This forecast and utilization data is to be contained in FCC Form 502, which was released informally by the Commission on June 14, 2000, and further modified on June 29, 2000, and July 14, 2000. The form requires carriers to disaggregate utilization data into the six new primary categories of numbering utilization, including Assigned, Intermediate, Reserved, Aging, Administrative, and Available Numbers.⁶

In adopting the six new primary categories of numbering utilization, the FCC assumed that “[t]he direct cost of implementing uniform definitions requires little more than rearranging existing

² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

³ *Id.*

⁴ *Part 68 Waiver Requests of Telephone Equipment Supply, Inc., Casio Communications, Inc., Tandy Corporation, Atlinks USA, Inc., Matsushita Electric Corporation of America, Vtech Communications Limited, Cidco Incorporated, Atlinks USA, Inc., Atlinks USA, Inc.*, 2000 FCC LEXIS 2702 (May 23, 2000).

⁵ *Report and Order* at ¶ 67.

⁶ *Id.* at ¶ 14 *et. seq.*

terms of individual definitions into standardized definitions.”⁷ The undertaking has proven to be more time-consuming and complicated than anyone, including VoiceStream, expected.

Implementation of the reporting requirement is a mammoth undertaking for VoiceStream and others who must redesign and reprogram multiple systems to collect and sort number utilization data and put it accurately into a series of reports according to “categories of use.” VoiceStream’s existing systems had not been designed to capture this type of information. This task is even further complicated by the fact that VoiceStream has multiple billing systems due to its recent mergers with Omnipoint and Aerial. VoiceStream is still in the process of integrating the former Omnipoint and Aerial operations into the new VoiceStream enterprise. This has been a major undertaking that includes replacing all three companies’ billing systems with an entirely new billing system. The vendor for this new billing system has had to undertake a major programming effort to accommodate the new data collection requirements.

Soon after the FCC released the *Report and Order*, VoiceStream formed a team dedicated to gathering data required to fill out FCC Form 502 on a timely basis, and dedicated significant resources, both internal and external, to that team. This team must manually retrieve and review each telephone number to determine its proper classification. This process frequently requires multiple data inquiries of VoiceStream’s three independent, vastly different, and incompatible billing and activation platforms, none of which has previously categorized numbers as “intermediate,” “reserved” or “administrative” in the same manner as the rules now require.⁸ VoiceStream estimates

⁷ *Id.* at ¶ 12, n.25.

⁸ Nor have these billing and activation platforms recorded numbers in the identified, but yet undefined, sub-categories.

that each team member would have to access hundreds of records per minute in order to complete this classification process by August 1, 2000, assuming that there were no other obstacles to compliance.⁹

Unfortunately, VoiceStream has faced many other obstacles to compliance. The primary obstacle has been the need for VoiceStream to consolidate its three separate and distinct billing and reporting platforms so that they can communicate with each other and track numbers in accordance with the FCC's granular reporting objectives. VoiceStream must account for over three million current subscribers who were activated on these three platforms, as well as the new subscribers who are currently being activated on both the new system and the legacy systems that are being replaced. Moreover, because neither the new system nor the old systems are able to classify numbers in accordance with the *Report and Order*, much of the work being done now cannot be effectively transferred into a database that can be maintained until the new system is capable of compliance with the *Report and Order*. Therefore, the team will have to duplicate all of the work that it is now underway once the new system is updated so that it can properly categorize numbers, because the inventory, as well as the utilization of individual numbers, will have changed in the interim. Although VoiceStream began this massive consolidation before the FCC released the *Report and Order*, VoiceStream does not expect to complete the consolidation process for several months, despite hiring outside consultants to expedite the process.

Based on the foregoing, VoiceStream submits that good cause exists for a temporary waiver of 47 C.F.R. § 52.15(f)(6)(i) so that VoiceStream will have until November 1, 2000, to complete and

⁹ Adding additional staff to the team is not a viable solution because (1) the time required to educate temporary personnel would not allow the timeframes to be met; and (2) the incidence of human error inserted into the data would be greatly increased.

file FCC Form 502 based on the September 30, 2000 inventory.¹⁰ The additional time will allow VoiceStream to achieve a far greater degree of accuracy in their reporting, which is crucial because NANPA must rely on this data, as well as the data from other carriers, to draw reliable conclusions about area code exhaust. VoiceStream will also save the costs associated with a one-time analysis of current number utilization that will produce questionable results.

The need for accurate utilization data, of course, is the fundamental reason that the FCC adopted uniform, national definitions for categories of usage.¹¹ VoiceStream submits that this same goal mandates that the FCC now grant VoiceStream a temporary waiver of the reporting requirement until November 1, 2000. Unique circumstances have made it impossible for VoiceStream to meet the current deadline, and thus the waiver is necessary to ensure that the FCC's goal of accurate data is satisfied, which serves the Public Interest. VoiceStream further submits that the waiver will speed the availability of accurate data, because the extra time provided by the waiver will allow VoiceStream to ensure that the data it reports is accurate and complete. Therefore, the requested waiver would not harm the Public Interest.

II. VOICESTREAM REQUESTS A TEMPORARY WAIVER OF THE SEQUENTIAL NUMBER ASSIGNMENT REQUIREMENT UNTIL NOVEMBER 1, 2000

In the *Report and Order*, the FCC adopted a general requirement that carriers "first assign all available telephone numbers within an opened thousands-block before opening another thousands-block, unless the available numbers in the opened thousands-block are not sufficient to meet a

¹⁰ VoiceStream fully supports the Joint Motion filed by ALTS, CompTel and PCIA for extension of the deadline to file FCC Form 502. VoiceStream also filed a Petition for Reconsideration on July 17, 2000 requesting the same relief.

¹¹ As the Commission noted, it codified the six primary definitions in the first instance in furtherance of its overall goal of "improv[ing] the accuracy of utilization data reporting." *Report and Order* at ¶ 14.

customer request.”¹² The FCC based this requirement, at least in part, on the INC Thousands-Block Pooling Administration Guidelines (at § 8.2.4), which requires that, prior to the pooling implementation date, carriers are to protect thousands-blocks that are less than ten percent contaminated.¹³

VoiceStream agrees in principal with a requirement that existing thousands-blocks be utilized before opening the next thousands-block, and is committed to achieving that result.¹⁴ However, VoiceStream’s systems, like the systems of most carriers, were not designed to ensure that numbers are assigned sequentially at the thousands-block level. Consequently, these systems are insufficient to meet the new sequential number assignment requirements. The INC Thousand-Block Pooling Administrative Guidelines have not been implemented in VoiceStream’s systems, as the requirement for any carrier to participate in number pooling did not exist until the *Report and Order*,¹⁵ and non-LNP-capable carriers, like VoiceStream, were specifically excluded from mandatory participation. Since sequential thousands-block utilization is an enabler to number pooling, VoiceStream is not able to comply with this requirement in advance of becoming LNP-capable. The system changes necessary to achieve sequential number assignment have proven to be resource-intensive and time-consuming to implement. Although VoiceStream is currently building routines into its systems so that thousands-blocks are utilized before other thousands-blocks are opened, the difficulties of

¹² *Id.* at ¶ 244.

¹³ *Id.* at ¶ 232.

¹⁴ This does not mean that the thousands-blocks should be required to be at a 100 percent fill rate before opening up the next thousands-block. From an operational perspective, there needs to be sufficient leeway to allow carriers to begin opening a new block in the switches and making all necessary database inputs and changes – things that would not be possible with a 100 percent fill rate prior to opening the next code. To the extent inconsistent with the Commission’s *Report and Order*, VoiceStream urges the Commission to clarify that it intends to give carriers that sort of necessary flexibility.

¹⁵ VoiceStream recognizes that some carriers were required to participate in certain limited, FCC-approved state number pooling trials.

making the necessary system changes have been compounded by VoiceStream's recent merger of its systems with Omnipoint's and Aerial's systems. These difficulties have delayed the completion and installation of the software updates and other system and process modifications necessary to enable sequential number assignment in VoiceStream's numbering systems. VoiceStream's outside consultant, Amdocs, has indicated that the necessary updates and modifications will not be completed and installed for a number of months.

VoiceStream therefore requests that the FCC delay the compliance date for meeting the sequential number assignment guidelines until February 1, 2001.¹⁶ The requested waiver would allow VoiceStream to complete the reprogramming efforts necessary to ensure that VoiceStream assigns numbers in a manner that is consistent with the requirements of the *Report and Order*, thus serving the Public Interest through ensuring that VoiceStream utilizes numbering resources as efficiently as possible. Moreover, the requested waiver would not harm the Public Interest because VoiceStream will work in good faith to implement sequential number assignment as quickly as technically feasible and will not take any steps that would result in the unnecessary contamination of thousands-blocks.


¹⁶ VoiceStream also filed a Petition for Reconsideration on July 17, 2000, requesting the same relief.

CONCLUSION

For the foregoing reasons, VoiceStream respectfully requests that the FCC grant a temporary waiver of 47 C.F.R. § 52.15(f)(6)(i), which requires carriers to file FCC Form 502 on August 1, 2000, and 47 C.F.R. § 52.15(j), which requires carriers generally to assign numbers sequentially.

Respectfully submitted,

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July 20, 2000

CERTIFICATE OF SERVICE

I, Tracey Sorenson, hereby certify that on this 20th day of July, 2000, I have caused a copy of the foregoing "Petition for Temporary Waiver of 47 C.F.R. §§ 52.15(f)(6)(i) and 52.15(j) of VoiceStream Wireless Corporation" to be hand delivered to the following:

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